

APPENDIX B. FAA GUIDANCE ON THIRD PARTY CONTRACTING FOR EIS PREPARATION

1. INTRODUCTION.

1a. The Council on Environmental Quality (CEQ) regulation 40 CFR section 1506.5(c) states that any environmental impact statement (EIS) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA) shall be prepared directly by a lead agency, upon request of the lead agency a cooperating agency, or a contractor selected by the lead agency.

1b. The intent of CEQ section 1506.5(c) is to avoid conflicts of interest by those preparing impact statements. Contractors must be able to sign a disclosure statement (see 40 CFR 1506.5(c))

1c. The following guidance is provided to ensure FAA's continued compliance with the CEQ regulations and NEPA.

2. GENERAL GUIDANCE.

2a. The FAA must either prepare an EIS in-house (utilizing agency personnel and resources) or select a contractor to prepare the EIS. One method of selecting a contractor that may be used is known as "third party contracting."

2b. "Third party contracting" refers to the preparation of an EIS by a contractor selected by the FAA and under contract to and paid by an applicant (e.g., airport sponsor, applicant, air carrier). Through the statement of work, the contractor is responsible for assisting the FAA in preparing an EIS that meets the requirements of the NEPA regulations, the FAA's NEPA procedures, and all other appropriate Federal, State, and local laws. Since this process is purely voluntary, it is recommended that an agreement to use this process, establish a scope of work, and delineate the FAA contractor and applicant responsibilities be formalized by a Memorandum of Understanding (MOU) among the FAA contractor and the project proponent. In such situations, FAA retains oversight of the EIS. The CEQ recognizes the third party contracting arrangement as a legitimate method of EIS preparation in which the non-Federal applicant actually executes the contract and pays for the cost of preparing the EIS (see CEQ "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" (46 FR 18026) and CEQ Guidance Regarding NEPA Regulations (48 FR 34263), available at <http://ceq.eh.doe.gov/nepa/regs/guidance.html>).

2c. The FAA's selection of a contractor under this process may be pursued by the FAA's evaluation of a preselection list ("short list") of contractors submitted to the FAA by an airport applicant based on the sponsor's request for proposal (RFP) and evaluation. The applicant may submit the list of candidates to the FAA ranked according to the sponsor's evaluation of the contractors qualifications. The FAA, however, is under no obligation to make a selection based on this ranking. The applicant also may submit the list of candidates to the FAA in an unranked form.

2d. Costs for preparing the EIS are paid by the applicant. For airport development projects and related activities, EIS may be funded by either Airport Improvement Plan (AIP) funds or local funds including Passenger Facility Charge (PFC) revenues. While AIP funds may be used to pay for costs associated with EIS preparation by a contractor selected by the FAA, Federal procurement requirements do not apply. Federal agencies are permitted under 40 CFR Part 18 to substitute their judgment for that of the grantee (i.e., airport) if the matter is primarily a “Federal concern” (i.e., consultant selection by FAA to comply the requirement of CEQ section 1506.5(c) is a “Federal concern”).

2e. Guidance provided in the most current version of FAA Advisory Circular 150/5100-14, Architectural, Engineering and Planning Consultant Services for Airport Grants Projects, shall be followed in selecting a contractor for EIS preparation.

2f. When an EIS is prepared by a contractor, the FAA is still responsible for:

- (1) Obtaining a “disclosure statement” from the contractor,
- (2) Exercising oversight of the contractor to ensure that a conflict of interest does not exist,
- (3) Taking the lead in the scoping process,
- (4) Furnishing guidance and participating in the preparation of the EIS,
- (5) Independently evaluating the EIS and verifying environmental information provided by the applicant, or others, adding its expertise through review and revision, as necessary,
- (6) Approving the EIS, and
- (7) Taking responsibility for the scope and content of the EIS.